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PATENT
10/669,108

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re: DAUGHERTY, Roger) Docket No: 21590-CIP
Serial No.: 10/669,108) Examiner: Patel, Nihir B.
Filed: September 23, 2003) Group Art: 3743

For: **APPARATUS AND METHOD FOR HUMIDIFICATION OF INSPIRED GASES**

RESPONSE TO RESTRICTION REQUIREMENT

August 13, 2004

MS: Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Dear Sir:

Responsive to the Restriction Requirement mailed July 13, 2004, in the above-styled patent application, please amend the application as indicated and consider the appended remarks.

CERTIFICATE OF EXPRESS MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service Express Mail with sufficient postage in an envelope addressed to: MS: Amendment, Commissioner For Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450 on:

8-13-04
(Date)
Cynthia Pilato
(Name of Person Mailing)
Cynthia Pilato
(Signature of Person Mailing)
8-13-04
(Date)

RESTRICTION ELECTION WITH TRAVERSE

Pursuant to Examiner's restriction requirement, Applicant elects **Species II: Figure 4, with traverse**, and hereby assert that Claims 1-4 are all readable thereon.

However, Applicant respectfully asserts that Examiner has not provided reasons and/or examples to support Examiner's conclusions. MPEP § 803. Additionally, Examiner has not shown, via appropriate explanation of separate classification, or separate status in the art, or a different field of search, that a serious burden will be imposed upon Examiner during examination of Applicant's invention. *Id.* Instead, Examiner has merely imposed an election/restriction requirement upon Applicant - without any explanation or showing of cause – and has advised Applicant that an election may be made with traverse. However, Applicant cannot make a proper election without fully understanding Examiner's reasons in support of Examiner's conclusion, and as such, cannot articulate a rational or cogent argument in support of Applicant's traversal to same.

Furthermore, in the absence of Examiner citing relevant classification and sub-classifications for the species cited in the Election/Restriction Requirement, Applicant cannot ascertain the nature of the variants/species in view of the art, nor can Applicant ascertain whether it would place undue burden upon Examiner in the examination of Applicant's invention as a whole.

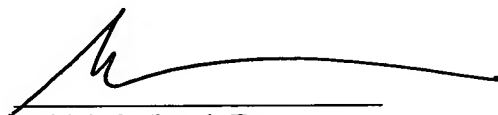
Nonetheless, Applicant respectfully asserts that all Independent Claims 1-4 are generic enough to encompass all disclosed and claimed embodiments of Applicant's invention.

Accordingly, Applicant respectfully requests that Examiner withdraw the election/restriction requirement in view of the foregoing arguments.

CONCLUSION

The above election is to form and thus, no new matter was added. Applicant hereby expressly reserves its right to seek protection of all non-elected species in related divisional applications. Should there be any questions or concerns, Examiner is invited to telephone Applicant's undersigned attorney.

Respectfully submitted this 13th day of August, 2004.



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